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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,787	12/20/2001	Jeffrey E. Fish	KCX-398 (15417)	9570
22827	7590	02/21/2006	EXAMINER	
DORITY & MANNING, P.A. POST OFFICE BOX 1449 GREENVILLE, SC 29602-1449			BEFUMO, JENNA LEIGH	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 02/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/027,787	FISH ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____.   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/04</u> .  | 6) <input type="checkbox"/> Other: _____.                                   |

**DETAILED ACTION**

1. Claims 1 – 42 are pending.

***Claim Rejections - 35 USC § 103***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1 – 10, 12 – 20, 22 – 35, and 37 – 42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. (4,892,535) in view of Tanzer et al. (5,411,497) for the reasons of record.
4. Claims 11, 21, and 35 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Bjornberg et al. and Tanzer et al. as applied to claims 1, 15, and 25 above, and in further view of Taylor et al. (5,332,613) for the reasons of record.
5. Claims 1 – 10, 12 – 20, 22 – 24, 40, and 41 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. (5,938,650) in view of Tanzer et al. for the reasons of record.
6. Claims 25 – 34, 36 – 39, and 42 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. and Tanzer et al. as applied above, and further in view of Bjornberg et al. for the reasons of record.
7. Claims 11 and 21 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al. and Tanzer et al. as applied to claims 1 and 15 above, and in further view of Taylor et al. for the reasons of record.
8. Claim 35 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Baer et al., Tanzer et al., and Bjornberg et al. as applied to claim 25 above, and in further view of Taylor et al. for the reasons of record.

*Response to Arguments*

9. Applicant's arguments filed December 22, 2005 have been fully considered but they are not persuasive. The applicant's have maintained the arguments set forth in the previous Office Action, that Bjornberg et al. discloses that the back layer is substantially flat (response, pages 9 – 12). As set forth, in the previous Office Action, the limitation that each substrate is textured using heat and pressure is a method limitation. Thus, the prior art need only have the claimed structure in the final product and not teach the exact same method of making the claimed product. Further, it is noted that the limitation that the backing layer is textured is not defined such that a specific height or dimensions to the claimed elevations and depressions. And while Bjornberg et al. does not explicitly teach that the backing sheet is textured, neither does Bjornberg disclose that the backing sheet remains completely flat during processing to produce a final product without any elevations, depressions, or a textured surface.

Thus, the question is what is the structure of the composite material produced as a result of the process taught by Bjornberg et al. When the method of making the composite material claimed by the applicant is compared to Bjornberg et al. both methods disclose applying a substantially flat layer to a second fabric layer which has pockets shaped therein and particles placed within the pockets. Further, both composite fabrics use a flexible back layer which is substantially flat when being bonded to a shaped first layer. Thus, while the back layer may be applied as a substantially flat layer, it will be flexible and will change shape based on the bonding process (i.e., embossing rollers) and the forces of the particles in the pocket being applied to the back sheet. Therefore, the final product will inherently be textured to some degree

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and have elevations and depressions to some degree in the back layer. Thus, the rejection is maintained.

10. The applicant also argues that the rejection based on Baer et al. is sufficient since Baer et al. fails to teach using a breathable, liquid-impermeable backsheet (response, pages 12 – 13).

However, this feature is taught by Tanzer et al. Tanzer et al. discloses that the liquid-impermeable backsheet in the absorbent product can be breathable as well as liquid-impermeable. Thus, based on the teachings of Tanzer et al. it would have been obvious to use breathable, liquid-impermeable backsheets as the backsheet in the composite taught by Baer et al. Further, since Baer et al. teaches the claimed depression and elevations in the pocketed structure Tanzer et al. does not need to teach this feature. Further, Baer et al. suggests using different sized and shaped pockets. Therefore, it would have been obvious to one of ordinary skill in the art to optimize the pocket size based on the desired end use of the composite material and the amount of liquid that the composite material will absorb. This optimization would require only routine skill in the art. The applicant has not provided evidence that the claimed pocket sizes would have any unexpected results. Therefore, the rejection is maintained.

11. Finally, the applicant argues that the rejection to claim 25 based on Baer et al., Tanzer et al. and Bjornberg et al. is based on improper hindsight (response, page 15). The applicant states that combining the teachings of Baer et al. and Bjornberg et al. is improper hindsight. However, both Baer et al. and Bjornberg et al. are drawn to similar subject matter, i.e., producing composite articles with pocket regions containing absorbent pockets. It must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of

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ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Therefore, the rejection is maintained.

### ***Conclusion***

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (571) 272-1472. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Jenna-Leigh Befumo".

Jenna-Leigh Befumo

February 8, 2006